

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

GREG R. O'BIER,)
) C.A. No. K09C-11-019
Plaintiff,)
)
v.)
)
JBS CONSTRUCTION, LLC,)
BRUCE WARDWELL, and)
SHARON WARDWELL,)
)
Defendants.)

Submitted: January 30, 2012

Decided: April 20, 2012

Greg R. O'Bier, Frankford, Delaware. *Pro se.*

D. Miika Roggio, Esq., Silverman, McDonald & Friedman, Wilmington, Delaware.
Attorney for Defendants.

*Upon Consideration of Defendants'
Motion for Summary Judgment*

GRANTED

VAUGHN, President Judge

O'Bier v. JBS Construction, et al.
C.A. No. K09C-11-019 JTV
April 20, 2012

OPINION

This case involves an action filed by the plaintiff, Greg R. O'Bier, against defendants JBS Construction, LLC, Bruce Wardwell and Sharon Wardwell for intentional trespass on land. Before the Court is the motion of all defendants' to dismiss which has been converted to a Motion for Summary Judgment.

FACTS

The plaintiff owned a vacant house located in Delmar, Delaware. He sold it in March 2009, eight months before this litigation started.

Defendant JBS was beginning the construction of a house on an adjoining lot. When it started, the lot was overgrown with brush, bramble, small trees, rotted trees, and debris. This condition existed right up to the property line with the plaintiff's property. JBS undertook to clear the lot, and in doing so encroached to a small degree on the plaintiff's property, removing like material from the plaintiff's property to the extent of the encroachment. The only actual, remaining evidence of the encroachment is a photograph of tread tracks made by a small bobcat bull dozer.

Prior to clearing the lot, an agent or employee of JBS called Mr. O'Bier twice but did not make contact with him. The second time, the agent or employee left a voice mail informing Mr. O'Bier of JBS' intent to clean up the JBS lot and the property line between the properties.

A photograph of the plaintiff's house on his property shows it to be in a dilapidated condition with boarded up windows. The photograph does not show any damage to the house which could possibly have resulted from JBS' act of encroachment.

O'Bier v. JBS Construction, et al.

C.A. No. K09C-11-019 JTV

April 20, 2012

The plaintiff claims that the defendants damaged his property. He claims that he received opinions and determinations “by both contractors and the appraiser and outside consultants that the damages were in excess of; 350,000, and that even after completion of the repairs, The structural integrity and safety of the home could not be Guaranteed.” However, even when the facts are read in the light most favorable to the plaintiff, the opinions and determinations are not relevant to any conduct by defendants.

Attached to the plaintiff’s original complaint are: interrogatories; two letters from Ralph N. Krum; a certified general appraiser; a map printed from mapquest indicating the location of the plaintiff’s home; an explanation of the taxes, zoning and assessment for the property; a definition of market value; a comparables grid; an adjustments grid; a document titled “Land Sales–Comments and Conclusions; a map titled “Flood Map of Subject Property”; a document titled “Assumptions and Limiting Conditions”; photocopies of the licenses held by the appraiser; and a document indicating the qualifications of the appraiser. In the course of discovery, the plaintiff submitted other documents and information which the Court has also considered.

The plaintiff filed an amended complaint with the approval of the Court. At the heart of it is the following allegation:

On the day of Dec 7, 2006 @ 8W Grove St Delmar Delaware; JBS Construction, Bruce Wardwell and employees Were building the house next to my house @ 6 W Grove St. In the process of their work; They damages my house; In the process of tree cutting, driving equipment on it, criminal trespassing. In this suit, JBS Const, & Bruce Wardwell et al...

O’Bier v. JBS Construction, et al.

C.A. No. K09C-11-019 JTV

April 20, 2012

Mr. O’Bier attempted to have the defendants arrested for trespassing, but the local police declined to make an arrest. An incident report which the police prepared states that a man working on the JBS lot admitted that while he was cleaning up debris on the property line he did drive onto the O’Bier property. There is no record in the report of any damage to Mr. O’Bier’s property.

In discovery, the plaintiff indicates that he does not possess any documents evidencing damage to the property.

STANDARD OF REVIEW

Summary judgment should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.¹ The moving party bears the burden of establishing the non-existence of material issues of fact.² If a motion is properly supported, the burden shifts to the non-moving party to establish the existence of material issues of fact.³ In considering the motion, the facts must be viewed in the light most favorable to the non-moving party.⁴ Thus, the court must accept all undisputed factual assertions and accept the non-movant’s version of any disputed facts.⁵ Summary judgment is inappropriate “when the record reasonably indicates that a material fact is in dispute or if it seems desirable to inquire more

¹ Super. Ct. Civ. R. 56(c).

² *Gray v. Allstate Ins. Co.*, 2007 WL 1334563, at *1 (Del. Super. May 2, 2007).

³ *Id.*

⁴ *Pierce v. Int’l Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

⁵ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992).

O’Bier v. JBS Construction, et al.

C.A. No. K09C-11-019 JTV

April 20, 2012

throughly into the facts in order to clarify the application of law to the circumstances.”⁶

DISCUSSION

The plaintiff has claimed in the litigation that the defendant’s encroachment caused a tree to fall and damage the house on his property. There is some evidence in the record that at some point a tree did fall and damage the house. The defendants state that the tree fall accident occurred on the west side of the house. The JBS property adjoins Mr. O’Bier’s property on the east. There seems to be no evidence whatsoever to support the plaintiff’s claim that the defendants damaged his house, and I find such claim to be not credible as a matter of law.

In order to present a *prima facie* case for trespass to land, a plaintiff must establish the following: (1) the plaintiff must have lawful possession of the property; (2) the defendant must have entered onto the plaintiff’s land without consent or privilege; and (3) the plaintiff must show damages.⁷ Any unlawful entry upon another’s land constitutes a trespass, and the law implies damages for such a trespass, but the amount depends upon the damage actually done.⁸

In this case the facts show that an intentional trespass did occur, and, as mentioned, some damages are implied. However, when the facts in this case are

⁶ *Mumford & Miller Concrete, Inc. v. New Castle County*, 2007 WL 404771, at *4 (Del. Super. Jan. 31, 2007).

⁷ *Williams v. Manning*, 2009 WL 960670, *1 (Del. Super. Mar. 13, 2009).

⁸ *Cochran v. City of Wilmington*, 7 Penne. 315 (Del. Super. 1909).

O'Bier v. JBS Construction, et al.

C.A. No. K09C-11-019 JTV

April 20, 2012

viewed in the light most favorable to the plaintiff, I find that the plaintiff cannot establish any actual damages. I further find that implied damages in this case are zero as a matter of law. Since the plaintiff cannot establish any damages, the defendants Motion for Summary Judgment is ***granted***.

IT IS SO ORDERED.

 /s/ James T. Vaughn, Jr.
President Judge

oc: Prothonotary
cc: Order Distribution
File